

FILED

FEB 06 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

Clerk, U.S. District Court
District Of Montana
Missoula

ANDREW DAVID GOLIE,

Petitioner,

vs.

**STATE OF MONTANA;
MONTANA BOARD OF PARDONS
AND PAROLE,**

Respondents.

CV 20-2-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on January 14, 2020, recommending that the Court dismiss Petitioner Andrew David Golie's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 4.) Golie failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendations (Doc. 4), the Court finds no clear error in Judge Johnston's recommendation that Golie's petition be denied for failure to allege violation of a federal right. Judge Johnston reasonably determined that Golie, who has alleged that his state parole should not have been revoked, has not alleged "that he is in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2254(a). Golie does not allege a procedural violation in his revocation but, at most "a 'mere error of state law,' [which] is not a denial of due process." *Swarthout v. Cooke*, 562 U.S. 216–222 (2011) (per curium) (quoting *Engle v. Isaac*, 456 U.S. 107, 121 n.21 (1982)).

Because there is no reasonable dispute regarding whether Golie may bring his claim under § 2254, the Court also adopts the recommendation to deny a certificate of appealability. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Golie has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED:

- (1) Judge Johnston's Findings and Recommendations (Doc. 4) is ADOPTED IN FULL;
- (2) Golie's Petition (Doc. 1) is DISMISSED as unexhausted;
- (3) A certificate of appealability is DENIED; and

(4) The Clerk of Court shall enter by separate document a judgment in favor of dismissal.

DATED this 6th day of February, 2020.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court